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No. 83-

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC. etc., et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT RE CONCEALMENT OF BUSINESS RELATIONSHIPS BETWEEN BANKRUPTCY JUDGE AND OPPOSING COUNSEL

PETITION

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QUESTIONS ADDRESSED TO INHERENT POWER

Whether concealment of the following by AETNA BUSINESS CREDIT, INC., predecessor to lead respondent named herein ("Barclays/Aetna"), in a brief filed in this Court in October, 1980, in opposition to QUINAULT PACIFIC CORPORATION ("Quinault") 's petition for a writ of certiorari (denied as Quinault Pacific Corporation v. Aetna Business Credit, Inc., 449 U.S. 954, 66 L.E.2d 218, 101 S.Ct. 360 [November 3, 1980]), constitutes a fraud under Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145, 21 L.E.2d 301, 89 S.Ct. 337 (1968), to wit:

A. With respect to Real Property Arrangements under Chapter XII, Federal Bankruptcy Act, copyrighted October 19, 1977, by The Harrison Company, an employer

for hire of UNITED STATES BANKRUPTCY JUDGE WILLIAM L. NORTON, JR. ("Judge Norton") (co-) author */

Where --

(1) Barclays/Aetna's counsel, KUTAK, ROCK & HUIE partner C. EDWARD DOBBS ("Kutak/Dobbs"), wrote portions of said book in 1976 and 1977 (Pet.E.Writ ¶72 **/);

(2) Kutak/Dobbs wrote the 1979 Supplement to said book in mid-1978 (Pet.E.Writ ¶114);

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*/ Proof is set forth in Petition for Extraordinary Writ ["Pet.E.Writ"] at 129-134, filed as original action in Court of Appeals per Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 [1944]).

**/ Respondent's conscious decision not to file counteraffidavits, as allowed under Federal Rules of Appellate Procedure 27(b) in connection with response below and (denied) motion for fee award confirms correctness of verified petition.

Which provided Judge Norton with -

(3) Unspecified amounts of royalty income in 1978, up to $250 of royalty income in 1979, 1980, up to $600 of royalty income in 1981, 1982 (Pet.E.Writ pp. 110, 102, 100, 96; Petition for Rehearing En Banc, June 22, 1983, at A-1);

(4) A common law copyright in said book from 1976 to October 18, 1977;

(5) A contractual right to royalty income from The Harrison Company from October 19, 1977 to present (Pet.E.Writ ¶116); and --

B. With respect to Norton Bankruptcy Law and Practice, copyrighted September 2, 1981, by Callaghan & Company, an employer for hire of JUDGE NORTON, Editor-in-Chief (Pet.E.Writ at pp. 76-87):

Where --

(6) KUTAK ROCK & HUIE partner HARRY D. DIXON, JR. ("Kutak/Dixon") */ entered into contract with Judge Norton to write Volume 2 of said treatise, to furnish supplementation with new cases, statutes, and to be paid royalties on account thereof (Pet.E.Writ ¶98);

(7) Kutak/Dixon commenced preparation thereof in early 1978 (Id. ¶78);

(8) Kutak, Rock & Huie provided legal representation to Judge Norton in making contract with Callaghan and Company (Pet.E.Writ ¶126);

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*/ The appearance of one partner of a law partnership in a lawsuit (Kutak/Dobbs) constitutes the appearance of all partners of that partnership (Kutak/Dixon) in the lawsuit. SCA Services, Inc. v. Morgan, 557 F.2d 110 (7th Cir. 1977).

(9) Co-"Contributing Editor" ROBERT J. HIPPLE entered into contract with Judge Norton to write Volume 2 of said treatise, to be and was paid royalties therefor (Pet.E.Writ ¶161B);

Which provided Judge Norton with -

(10) $12,000.00 in royalty income from Callaghan & Company (Pet.Reh. A-1);

(11) Advances against royalty and reimbursement of expenses in years prior to 1982 (Pet.E.Writ ¶127);

(12) Volume 2 of said treatise (Pet.E.Writ ¶162A);

(13) A legal ownership interest in a common law copyright to "unfixed" (17 U.S.C. §302(b)) materials which became and will become Volume 2 or supplements thereto;

(14) A contractual right to receive royalties from April, 1979 (Pet.Reh. A-1);

(15) Marketability of said treatise and supplements; and --

C. With respect to Judge Norton's operation of the United States Bankruptcy Court in In the Matter of Georgia Paneling Supply, Inc., Bankrupt, Bankruptcy No. B74-1628A, Northern District of Georgia (June 24, 1974 to June 30, 1981):

Where --

(16) Kutak/Dobbs secretly conducted legal research for Judge Norton over two and a half years (May 5, 1976 to November 14, 1978) in the vigorously contested, pending case In the Matter of Georgia Paneling Supply, Inc. (Pet.E.Writ ¶133; see pp. 148-159);

(17) Kutak/Dobbs secretly wrote orders, opinions, memoranda in Georgia Paneling Supply, Inc. for Judge Norton over said two and a half year period (Ibid);

(18) Kutak, Rock & Huie typed orders, opinions, memoranda in Georgia Paneling Supply, Inc. for Judge Norton for said two and a half year period (Pet.E.Writ ¶103);

(19) Kutak/Dobbs secretly discussed legal matters pending before and engaged in work sessions with Judge Norton ex parte in Georgia Paneling Supply, Inc. over said two and a half year period (Pet.E.Writ ¶133; see pp. 148-159);

(20) By March 6, 1978, Kutak/Dobbs had served as no-asset trustee in more than 200 cases pending before Judge Norton (Pet.E.Writ ¶54);

Which provided Judge Norton with -

(21) avoidance of duty to administer no-asset case himself (Pet.E.Writ ¶50);

(22) no reversals on appeal;

(23) preservation of good nationwide reputation;

D. And with respect to the following, vigorously contested, specific matters occurring in Georgia Paneling Supply, Inc. then pending before and purportedly decided by Judge Norton --

(24) KUTAK, ROCK & HUIE's client BARCLAYS/AETNA ("Kutak/Barclays/Aetna") 's motion for an award of costs against QUINAULT filed June 9, 1977, ordered on June 13, 1977, to be heard June 27, 1977, was granted (sic) on June 13, 1977 (Pet.E.Writ ¶78A, 79);

(25) Quinault's FRCP 60(b) motion, May 31, 1977, to set aside a Kutak, Rock &

Huie -- engineered settlement of the trustee's dispute with Kutak/Barclays/Aetna was ordered denied Dec. 20, 1977, with reasons furnished post hoc by Kutak/Dobbs in a secretly delegated, 40-page opinion of Jan. 5, 1978 (Pet.E.Writ ¶77, 92-95);

(26) Kutak/Barclays/Aetna's motion for an award of attorney's fees against Quinault filed Sept. 1, 1977, was granted by order June 7, 1978, upon memoranda of Sept. 11, 1978 and Nov. 14, 1978, all of which were secretly delegated by Judge Norton to Kutak/Dobbs (Pet.E.Writ ¶82, 110-112); and --

E. And with respect to the following additional facts:

(27) Kutak/Dobbs had on February 28, 1978 and he and Kutak, Rock & Huie partner R. WILLIAM IDE III ("Kutak/Ide") had on March 3, 1978 acted so as to conceal the

financial relationships between Judge Norton and Kutak, Rock & Huie (Pet.E.Writ ¶104-106);

(28) Judge Norton himself had on February 28, 1978 and March 6, 1978 acted so as to conceal the financial relationships between Himself acting nonjudicially or extrajudicially and Kutak, Rock & Huie (Ibid);

(30) Barclays/Aetna, Pennington and Freeman & Hawkins were knowing and willing beneficiaries of this concealment (Ibid).

2.

Whether "the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of [the Court's] rules." Unites States v. Ohio Power Co., 353 U.S. 98, 99, 1 L.E.2d 683, 685 (1957). Cf. Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 69 L.E.2d 103 (1981).

QUESTION ADDRESSED TO SUPERVISORY POWER

Because Rule 404(b) of the Federal Rules of Evidence (providing that evidence of "extrinsic offenses" [United States v. Beechum, 582 F.2d 898 at 902 n.1 (old 5th Cir. en banc 1978 per Tjoflat, J.)] is admissible to prove intent or plan) is applicable to a Court of Appeals (Rule 1101[a]) especially where exercising original jurisdiction under the All-Writs Act (28 U.S.C. §1651), did not the Court of Appeals depart from the accepted and usual course of judicial proceedings in an order of June 16, 1983 denying Quinault's motion to supplement the petition for an extraordinary writ with subsequently developed evidence of an extrinsic offense relevant to the underlying issue of the intent and plan of the Bankruptcy Judge (in conjunction with Kutak, Rock & Huie)

to deceive the Court of Appeals and Quinault by concealment of prohibited financial relationships between them, where the evidence includes the bankruptcy judge's federally filed Financial Disclosure Report for calendar year 1982 of which the Court of Appeals should have taken judicial notice (upon the request contained below), whose late filing and disclosure of $12,000 of royalties from Callaghan & Company plus presumptions which this Court should draw (upon the request contained therein) suggest that the bankruptcy judge -- who has known since December 10, 1982 of Quinault's counsel's discovery -- (a) withheld filing until he saw whether Quinault would seek relief in the 11th Circuit and what proof it could produce, (b) determined to disclose no royalties if Quinault did not complain of the Callaghan-Norton

connection, which the bankruptcy judge had not disclosed in 1981 and earlier, but if Quinault did complain of the Callaghan-Norton connection, (c) disclose all payments as received in 1982, so as to indicate falsely that the Callaghan relationship commenced in 1982; and this evidence has a tendency to make the 1976-1980 intent or plan to deceive Quinault and this Court more probable than it would be without the evidence. Compare United States v. Satterfield, 644 F.2d 109 (old 5th Cir. Unit B [became 11th Cir.], 1981) with United States v. Pollard, 509 F.2d 601 (old 5th Cir. 1975).

QUESTIONS PRESENTING CIRCUIT CONFLICT

Whether it is a violation of 28 U.S.C. § 455 for a judge's law clerk to be in the employ of an attorney representing

a litigant before the judge. Yes: Hall v. Small Business Admin., 695 F.2d 175 (new 5th Cir. 1983). No: In the Matterof Georgia Paneling Supply, Inc., 607 F.2d 117 (old 5th Cir. 1979), vacated 613 F.2d 137 (1979), reinstated 616 F.2d 893 (1980).

Where Judge Norton had signed an order awarding attorneys' fees, but no findings of fact or conclusions of law, and where the judgment debtor had taken an appeal, then under submission to, UNITED STATES DISTRICT JUDGE Richard C. Freeman ("Judge Freeman"), as appellate court, does an ex parte conference on the subject matter of the appeal between Judge Norton and Judge Freeman:

(a) mandate the appellate judge's disqualification, where he subsequently affirms the fee award without benefit of findings of fact (until reconsideration

sought) (Pet.E.Writ ¶118) and

(b) constitute a departure from the accepted and usual course of judicial proceedings. Yes: Matter of Cunningham, 57 N.Y.2d 270, 456 N.Y.S.2d 36, 442 N.E.2d 434 (1982). No: In the Matter of Georgia Paneling Supply, Inc., 607 F.2d 117 (old 5th Cir. 1979), vacated 613 F.2d 137 (1979), reinstated 616 F.2d 893 (1980).

UNSETTLED FEDERAL QUESTION

Did Judge Norton have "any other interest that could be substantially affected by the outcome of the proceeding" under 28 U.S.C. §455(b)(4)?

QUESTION OF EXTREME IMPORTANCE

A. Inasmuch as the Supreme Court of the United States has determined within the past year that so much of the Bankruptcy Reform Act of 1978 is unconstitutional as authorized bankruptcy judges to exercise the judicial power of the United States granted by Article III of the United States Constitution, (Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 73 L.E.2d 598, 102 S.Ct. 2858 (1982));

and

B. Inasmuch as the Congress of the United States is considering a bill to grant to bankruptcy judges life tenure and protection from diminution in compensation during tenure so as to be constitutionally capable of deciding legal issues presented to them by the

Bankruptcy Reform Act of 1978 requiring an exercise of the judicial power of the United States;

and

C. Inasmuch as the President of the United States desires to create several hundred new Article III judges assigned to handle bankruptcy matters to be filled with the present bankruptcy judges;

and

D. Inasmuch as the Chief Justice of the United States has publicly opposed legislation that would elevate bankruptcy judges to Article III status,

and

E. Inasmuch as a number of circuit judges, district judges and members of

the private bar of this nation also oppose elevating bankruptcy judges to Article III status;

Does not this Court as an Article III court have an obligation to the other two coordinate branches of Government -- (a) the Congress, (b) the President -- and to the public to grant a writ of certiorari or to vacate the denial of the timely petition for rehearing in this Court on January 12, 1981 (449 U.S. 1104, 66 L.E.2d 832, 101 S.Ct. 905) --

(1) to allow a full and public investigation of the workings of the United States Bankruptcy Court for the Northern District of Georgia;

(2) to test the operation of this United States Bankruptcy Court against (a) Fifth Amendment Due Process of Law, (b) 28 U.S.C. § 455, and (c) the Code of

Judicial Conduct for United States Judges, adopted by the Judicial Conference of the United States (April 5, 6, 1972);

(3) to inquire into whether the bankruptcy judge has knowingly violated 28 USCA App. 1 §301(c), the Ethics in Government Act of 1978.

II.

PARTIES RESPONDENT AND CORPORATE INFORMATION AND AFFILIATIONS

A. PARTIES RESPONDENT.

Petitioner named the following as Respondents in the United States Court of Appeals: BARCLAYS AMERICAN/BUSINESS CREDIT, INC., as reported successor in interest to AETNA BUSINESS CREDIT, INC.; JOHN C. PENNINGTON, Former Trustee in Bankruptcy for GEORGIA PANELING SUPPLY, INC., Discharged Bankrupt; FREEMAN & HAWKINS; THE CITIZENS AND SOUTHERN NATIONAL BANK; and INTERNATIONAL PAPER COMPANY. Petitioner named former joint petitioners in the Supreme Court, THE FLINTKOTE COMPANY; ICG VISTA PETROLEUMS, INC. as Involuntary Petitioners/Deemed Respondents (Federal Rule of Appellate Procedure 21[c]). Petitioner did so by

analogy to Independent Wireless Telegraph Co. v. Radio Corp. of America, 269 U.S. 459, 70 L.Ed. 357, 46 S.Ct. 166 (1926). Petitioner deems them to be so designated herein.

B. PETITIONER.

Petitioner QUINAULT PACIFIC CORPORATION, a corporation organized under laws of the State of Washington, has no parent corporation although it is owned in part by an employees stock ownership trust; and QUINAULT may be deemed to have one affiliated corporation: South Sound Cedar, Inc., also a Washington corporation.

On January 3, 1983, QUINAULT filed a petition under Chapter 11 of the Bankruptcy Reform Act of 1978 (assigned

Case No. 83-00023). By order of the United States Bankruptcy Court for the Western District of Washington, February 14, 1983, QUINAULT was "authorized to employ" the undersigned counsel "for the specific purposes outlined in the Application" which states that QUINAULT "may have been denied an impartial hearing as a result of alleged impermissable business dealings between the bankruptcy judge and counsel in the then-pending bankruptcy of Georgia Paneling." (Pet.E.Writ ¶156-161, pp. 135-137)

III.

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Judge Norton's books, and treatises; Disclosure

Annual Survey of Bankruptcy Law, copyrighted 1976 annually, by Callaghan and Company. 14

Evidence in Federal Bankruptcy Trials, copyrighted 1978, by The Harrison Company, with a co-author. 12,13

Real Property Arrangements Under Chapter XII, Federal Bankruptcy Act, copyrighted October 19, 1977, The Harrison Company. i, 12, 13, 17, 18, 20, 47, 50, 52

1979 Supplement to Real Property Arrangements, copyrighted (sic) 1979. . . . . iii, 12, 13, 17, 18, 20, 52

Norton Bankruptcy Law And Practice copyrighted September 2, 1981, by Callaghan and Company . . . iii, 14, 16, 18, 27, 51, 52

Financial Disclosure Reports, filed by Judge Norton, 1978 to 1982. . . . . iii, xii, 4

V. REFERENCES TO OPINIONS AND ORDERS IN COURTS BELOW.

The original cases in the United States Court of Appeals for the (old) Fifth Circuit to which the instant matter appertains were two: Case No. 79-1076, sometimes referred to herein as "the FRCP 60(b) case", is reported at In the Matter of Georgia Paneling Supply, Inc., 616 F.2d 893 (1980), reinstating (sic) 607 F.2d 117 (1979), vacated 613 F.2d 137 (1979), resulting from petition for appeal allowed at 588 F.2d 93 (1978), vacating 581 F.2d 520 (1978).

Case No. 78-3370, sometimes referred to herein as "the fee award case", is unreported and noted at In the Matter of Georgia Paneling Supply, Inc., 617 F.2d 293 (1980, Table), reinstating (sic) 607 F.2d 1004 (1979, Table), vacated 613 F.2d 312 (1979, Table), rehearing denied 618 F.2d 1389 (1980, Table).

Petitioner QUINAULT PACIFIC CORPORATION with three other parties filed a petition for writ of certiorari in the FRCP 60(b) case which this Court assigned Case No. 80-344 and denied sub nom. Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954, 66 L.E.2d 218, 101 S.Ct. 360 (1980), and also denied a petition for rehearing. 449 U.S. 1104, 66 L.E.2d 832, 101 S.Ct. 905 (1981).

Petitioner and four other parties filed an application for a stay of mandate in the fee award case which this Court assigned No. A-1169 and denied sub nom. Quinault Pacific Corp. v. Aetna Business Credit, Inc., 448 U.S. 915, 65 L.E.2d 1178, 101 S.Ct. 35 (1980). Said parties also filed a petition for writ of certiorari in the fee award case which this Court assigned Case No. 80-345 and denied, 449 U.S. 954, 66 L.E.2d 218, 101

S.Ct. 360 (1980), and denied a petition for rehearing, 449 U.S. 1104, 66 L.E.2d 832, 101 S.Ct. 905 (1981).

None of the recent proceedings in the United States Court of Appeals for the Eleventh Circuit, as successor to the old Fifth Circuit, have been reported or noted.

VI. GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

(i) A petition for an extraordinary writ was filed May 20, 1983 in the United States Court of Appeals of the Eleventh Circuit as successor to the old Fifth Circuit, assigned Case No. 83-8357, and denied in a one-sentence unreported order of June 2, 1983 (App. at A-1). Respondent Barclays American/Business Credit, Inc. ("Barclays/Aetna") filed a motion for an award of attorney's fee

which was denied in a one-sentence unreported order of June 13, 1983 (App. at A-2). Petitioner filed a motion for an extension of time to file a petition for rehearing en banc in order to supplement the petition for extraordinary writ with information derived from the bankruptcy judge's late filed 1982 Financial Disclosure Report. This motion was denied in an unreported one-sentence order of June 16, 1983 (App. at A-3).

(ii) The petition for rehearing en banc was denied in an unreported order of July 28, 1983 (App. at A-4).

(iii) The statutory provisions believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari are as follows: 28 U.S.C. § 1254(1); 28 U.S.C. § 452; 28 U.S.C. § 1651; 28 U.S.C. § 2106.

VII. CONSTITUTIONAL PROVISIONS, STATUTES WHICH THE CASE INVOLVES

Sources are referenced at pages 171-175 in "Part Three: Constitutional Provisions, Statutes, Regulations Involved", located Petitioners' Joint Appendix filed September 2, 1980 in respect of Quinault Pacific Corporation v. Aetna Business Credit, Inc., Case No. 80-344 and 80-345,

to which petitioner herein, which was a petitioner therein, respectfully calls attention.

VIII. STATEMENT OF THE CASE.

A. Georgia Paneling Supply ("GPS")

Quinault sold cedar lumber on credit to GPS in 1973 at a time when Barclays/Aetna was making advances to GPS secured by a guaranty in turn secured by accounts receivable and inventory. GPS had become insolvent and Barclays/Aetna hid this fact in order to induce Quinault and other wholesale suppliers to sell goods which Barclays/Aetna could seize, liquidate and use to pay off the bad loans. Barclays/Aetna discovered the insolvency after GPS's lender, the C&S Bank, had discovered it, and the two companies eventually joined hands in each company's ongoing effort to defraud the suppliers (Pet.E.Writ ¶27-38).

B. The Bankruptcy.

Quinault got wind of the fraud in

the early summer of 1974, and together with several other Pacific Northwest suppliers filed an involuntary petition in the United States Bankruptcy Court for the Northern District of Georgia on June 24, 1974. The case was assigned to Judge Norton who on July 29, 1974 declared GPS to be a bankrupt (Pet.E.Writ ¶39-40).

Quinault strove mightily to uncover the Barclays/Aetna-C&S fraud and to this end had Judge Norton appoint John C. Pennington as receiver and trustee in bankruptcy (Pet.E.Writ ¶8). Mr. Pennington was one of Judge Norton's four no-asset trustees whom he appointed to handle all such cases (Pet.E.Writ ¶50). He promised that he would appoint them to lucrative cases in return for such services (Pet.E.Writ ¶52). Quinault also urged Mr. Pennington to file a plenary action for fraud on the bankrupt which was accomplished in state court on July 9, 1975. The defendants

removed it to the United States District Court for the Northern District of Georgia (Civil Action No. C75-1540A) as Pennington v. Aetna Business Credit, Inc. and The C&S Bank of North Fulton ("Pennington v. Aetna") (Pet.E.Writ ¶48-49).

C. Pennington v. Aetna.

The plenary action was assigned to UNITED STATES DISTRICT JUDGE Richard C. Freeman ("Judge Freeman") who later stated several times on the record that he detested bankruptcy law (Pet.E.Writ ¶74-75). Nevertheless, he allowed Quinault and several other unsecured creditors to intervene in the action when it appeared that the trustee was uninterested. (Order, September 30, 1976.) Also, Judge Freeman denied motions for summary judgment, motions for reconsideration, motions to limit issues,

etc. filed by the defendants and ultimately scheduled a jury trial in October, 1981.

E. Judicial Methodology.

The trustee's lack of interest in the case resulted in a $350 settlement with Barclays/Aetna which came on for hearing on May 18, 1976. At the hearing Barclays/Aetna was represented by Kutak/Dobbs, who was another of Judge Norton's four no-asset trustees. By March 6, 1978, Kutak/Dobbs had so assisted Judge Norton in more than 200 cases (Pet.E.Writ ¶54).

Judge Norton reserved decision on the application to settle at the end of the hearing, but immediately thereafter called in Kutak/Dobbs and the trustee, discussed the case with them ex parte, decided the matter in their favor,

assigned to Dobbs the task of writing an opinion, thereafter discussed it with him, ultimately publishing it as the judge's own work on June 17, 1976 (Pet.E.Writ ¶60A).

This pattern was continued without interruption throughout the bankruptcy proceedings until the last order was entered by Judge Norton on November 14, 1978 (Pet.E.Writ passim).

Quinault's counsel learned on June 4, 1976, that Judge Norton had arrangements with several Atlanta law firms where private lawyers would be secretly asked to decide cases for Judge Norton, write memoranda and decisions which would be published as the judge's own work (Pet.E.Writ ¶56-57).

Along this time Judge Norton made an arrangement with his alma mater, Emory

University Law School, whereby law students would become his law clerks and earn credit toward their law degree. Soon, though, Judge Norton had these students working on books he wanted published (Pet.E.Writ ¶64-65).

E. Publishing Enterprise.

The 1973-1975 recession hit the Atlanta real estate market with special severity, and lawyers rediscovered the cram-down provisions of Chapter XII of the Bankruptcy Act of 1898, as amended. However, there were few well reasoned judicial opinions or law review articles on the subject (Pet.E.Writ ¶66-68).

At the same time, the organized bar was becoming dissatisfied with the publisher of the official judicial opinions of the Georgia appellate courts and the Georgia Code Annotated for

excessive expense and poor publishing decisions. The matter became serious and a committe was appointed which in time led to special legislation and litigation whereby the state work was re-contracted out to an out-of-state publisher. Accordingly, in 1976, The Harrison Company was desperately looking for other titles to publish (Pet.E.Writ ¶69).

A marriage occurred between Judge Norton and The Harrison Company to publish Real Property Arrangements underChapter XII, Federal Bankruptcy Act ("Chapter XII book"), copyrighted October 19, 1977, a 1979 Supplement, prepared by mid-1978, and Evidence in Federal Bankruptcy Trials ("Evidence book"), published in 1978 (Pet.E.Writ ¶70-71).

A United States Bankruptcy Judge has many duties to accomplish, both administrative and judicial. It is a

full time job. To author these books Judge Norton needed assistance. He got it from the law students at Emory Law School and from the private Atlanta Bar. Specifically, he got Kutak/Dobbs, to write a major portion of the Chapter XII book, the 1979 Supplement, and another bankruptcy judge to assist with the Evidence book. The Emory law students and the four no-asset trustees served as editors, proofreaders (Pet.E.Writ ¶72).

1978 also proved to the year that a Bankruptcy Code was finally enacted. The matter had been under active study for more than ten years. By 1977 Judge Norton had fixed his mind on writing the definitive bankruptcy treatise. The passage of the 1978 Act would be the occasion. He commenced preparation of an outline in 1977 and began to recruit Emory law students and members of the private Atlanta Bar to help. Soon,

however, the publisher of another Norton work, Annual Survey of Bankruptcy Law, prepared by the Emory law students under Judge Norton's name, agreed to publish the treatise and suggested an all star cast of United States Bankruptcy Judges and leading bankruptcy lawyers across the United States. The bulk of Judge Norton's time from early 1978 to September, 1981 was devoted to the publication by Callaghan & Company of Norton Bankruptcy Law and Practice, copyrighted September 2, 1981 (Pet.E.Writ ¶97-98).

The "Introduction" authored by Judge Norton prior to May 22, 1981, states that he had been working on the treatise "for the past three years or so". He describes his regard for the contributing editors and consultants as "unbounded" (Pet.E.Writ at pp. 85-87). The author pages (Id. at pp. 80, 83) and the

Certificate of the United States Copyright Office (Id. at 92) disclose that a contributing editor was Kutak/Dixon and a consultant was Kutak, Rock & Huie lawyer Timothy J. Kincaid ("Kutak/Kincaid").

G. Judicial Misconduct.

On February 28, 1978, Judge Norton in conjunction with Kutak/Dobbs unreasonably restricted Quinault's discovery of Dobbs, Kutak's Ide so as to conceal the publishing ventures between Aetna's lawyers and Judge Norton (Pet.E.Writ ¶104).

On March 6, 1978, Judge Norton prevaricated when he denied that Kutak's Dobbs had secretly ghost-written the 40-page opinion published January 5, 1978. (He also misrepresented from the bench that he had not eaten breakfast

with the trustee in bankruptcy at 7:00 a.m. on September 20, 1977 prior to a hearing in the Georgia Paneling Supply, Inc., bankruptcy.) (Pet.E.Writ ¶106).

Despite Quinault's charges of judicial misconduct to Judge Norton's face on the record he denied such and wilfully failed to disclose thecontractual relationships which he had with Kutak/Dixon whereunder Judge Norton promised to pay Kutak/Dixon a portion of the royalties which Judge Norton himself would earn from Callaghan & Company. For 1982, Judge Norton disclosed $ 12,000.00 of royalties from Callaghan & Company, or one-fourth his judicial salary (Pet.Rehearing at A-1, 4th unnumbered page). To a second contributing editor of Volume 2 of Norton Bankruptcy Law and Practice Judge Norton has actually paid royalties (Pet.E.Writ ¶161B, 162A).

Moreover, Judge Norton failed to disclose that Kutak/Dobbs had written a portion of the Chapter XII and would write a portion of the 1979 Supplement (Pet.E.Writ ¶114).

Despite District Judge Freeman's order that Judge Norton enter findings of fact and conclusions of law on the fee award, Judge Norton delegated this job to Kutak/Dobbs who ghost-wrote secretly a 37-page memorandum on September 11, 1978 and a seven-page memorandum on November 14, 1978 (Pet.E.Writ ¶121-122, 125).

On June 7, 1978, Judge Norton entered a $ 5,146.30 fee award in favor of Kutak/Barclays/Aetna, knowing the money would indirectly benefit Kutak. The money was compensate Kutak/Dobbs for serving as law clerk to Judge Norton in the Georgia Paneling Supply case for more than two years, and for writing the

Chapter XII book and 1979 Supplement for the judge. Of course, this would be poor pay. So the judge allowed Kutak/Dobbs to write the opinion as he saw fit in order to lend factual support for Barclays/Aetna's $600,000 of counter-claims which Aetna had interposed against Quinault in Pennington v. Aetna (Pet.E.Writ ¶110-112).

H. Discovery of Ghost-Writing and Ex Parte Conferences between Judge Norton and Judge Freeman While Case on Appeal From One To Other

The $350 settlement was approved by Judge Norton. An appeal was taken to District Court and assigned to Judge Freeman, who affirmed. A FRCP 60(b) motion was filed, resulting in a remand to Judge Norton to conduct an evidentiary hearing. During the proceedings before Judge Norton from late August to early January, 1978, Kutak/Dobbs was writing the Chapter XII book and Kutak/Dixon was assisting with Norton Bankruptcy Law and

Practice. Kutak/Dobbs was writingJudge Norton's orders and opinions in the GPS case (Pet.E.Writ passim).

Proof of ghost-writing was obtained on February 28, 1978. Judge Norton apparently feared discovery. He previously promised to enter a fee award for Kutak/Barclays/Aetna. Upon Quinault's making known facts in open court, the judge retaliated by entering a particularly large $36,331.30 fee award against Quinault. Having expressly ruling that he would not enter a fee award against Quinault's counsel, the judge made him jointly and severally liable (Pet.E.Writ ¶105).

On February 28, 1978, the FRCP 60(b) case was on appeal from Judge Norton to Judge Freeman. But Judge Freeman was not interested and ignored the issue in affirming the settlement. While the fee award was on appeal from Judge Norton to

Judge Freeman and before Judge Norton had entered findings of fact and conclusions of law, Judge Norton ex parte met with Judge Freeman and discussed the case. After the conference Judge Freeman entered the order of July 25, 1978. There is no motion seeking permission to open the depositions. The order was drafted by Kutak's Dobbs during the time he was drafting the 1979 Supplement for the Chapter XII book. Dobbs may have been present at the conference (Pet.E.Writ ¶118).

H. Quandary in Old Fifth Circuit.

A panel of the Court of Appeals first denied Quinault's petition for a discretionary appeal, stating that "The occurrence of ex parte conferences between the bankruptcy judge, the trustee, and Aetna's lawyer alone do not demonstrate collusion." 581 F.2d 520,

522 (1978). But then on petition for rehearing, the original panel opinion was vacated "Because of the allegations of judicial misconduct . . . ." 588 F.2d 93 (1978). The matter came on for hearing before a second panel and Judge Freeman's affirmance was affirmed. 607 F.2d 117 (1979). A petition for rehearing was again filed, and was again granted, and the previous panel opinion was vacated. 613 F.2d 137 (1979). Oral argument was had before a third panel which reinstated the second panel's vacated opinion with these closing remarks: "The appellee's motion for assessment of attorney fees against appellants for frivolous appeal is denied." 616 F.2d 893 (1980). An unnoted petition for rehearing was denied.

The Old Fifth Circuit also had problems with the fee award. It was affirmed. 607 F.2d 1004 (1979, Table). A petition for rehearing was filed,

granted, and the original paenl opinion was vacated. 613 F.2d 312 (1979, Table). On rehearing before another panel, the earlier affirmance was reinstated. 617 F.2d 293 (1980, Table). A petition for rehearing was denied. 618 F.2d 1389 (1980, Table).

I. 1980 Cert. to Supreme Court.

Both Cases were the subject of cert. petitions in this Court where they were assigned Cases No. 80-344, 80-345. The cert. petition in No. 80-344 stated on page 28: "Although no pecuniary interest can be proven, petitioners' proof of other facts -- taken in connection with admissions in judico -- should suffice to establish mandatory disqualification." To repeat, Quinault did not previously claim that Judge Norton had a financial interest in the GPS case.

Quinault sought an application for a stay in the fee award case, which was denied. 448 U.S. 915, 65 L.E.2d 1178, 101 S.Ct. 35 (1980). Certiorari was denied in both cases on November 3, 1980. 449 U.S. 954, 66 L.E.2d 218, 101 S.Ct. 360 (1980). Petition for rehearing was denied in both cases on January 12, 1981. 449 U.S. 1104, 66 L.E.2d 832, 101 S.Ct. 905 (1981).

K. Publicity Debilitates Judge Freeman.

Six weeks after Quinault's cert. petitions were filed in the Supreme Court the October 17, 1980 morning edition of THE ATLANTA CONSTITUTION carried a front-page newspaper story by a Pulitizer-prize-winning reporter entitled, "Two Atlanta U. S. Judges Accused of Legal 'Misconduct'". Other newspapers and radio stations carried the story (Pet.E.Writ ¶435, pp. 298-300).

Before noon that day Judge Freeman called for the briefs. A year and four days later, he told Quinault, after it had settled Pennington v. Aetna, that out-of-town house guests of his had seen the article that morning (Pet.E.Writ ¶136).

Throughout this period Judge Freeman was very ill, undergoing several medical operations and missing ten or eleven weeks from his judicial duties. The adverse publicity preyed on his mind and in Quinault's president's opinion emotionally and mentally disturbed him (Pet.E.Writ at p. 68, 173, ¶144).

K. Termination of Pennington v. Aetna.

Judge Freeman's prejudice against Quinault for merely reporting the truth resulted in great fear of an astronomical fee award in Aetna's and C&S's favor. Therefore, Quinault settled the suit for

zero dollars. The release specifically excludes matters not alleged in pleadings and briefs. As pointed out previously, no allegation was ever made that Kutak, Rock & Huie was engaged in a publishing enterprise with Judge Norton (Pet.E.Writ ¶ 144, 146-146A, 150; pp. 138-141).

N. Discovery of Publishing Enterprise

In November, 1982, Quinault's former counsel learned of the publishing enterprise. He told Quinault on December10, 1982. Quinault filed a Chapter 11 petition in the United States Bankruptcy Court for the Western District of Washington on January 3, 1983. By court order dated February 10, 1983, Quinault was "authorized to employ" former cousel "for the specific puposes outlined in the Application" which states that Quinault "may have been denied ar

impartial hearing as a result of alleged impermissable business dealings between the bankruptcy judge and counsel in the then-pending bankruptcy of Georgia Paneling." (Pet.E.Writ ¶154-161; pp. at 135-137).

M. Petition for Extraordinary Writ.

After making demand on Quinault's former joint venture partners in the litigation, Quinault filed a petition for an extraordinary writ on May 20, 1983 inthe United States Court of Appeals for the Eleventh Circuit where the matter was treated as an emergency motion and assigned No. 83-8357.

O. Judge Norton's Belated Disclosure That He Had Received $12,000.00 From Callaghan & Company.

The petition for extraordinary writ was mailed immediately by United States Registered Mail to Judge Norton. On May

23, 1983, his secretary signed the return receipt, which Quinault's counsel received May 24. Two days later, the Judicial Conference of the United States received Judge Norton's 1982 Financial Disclosure Report, which had been due on May 15, 1983. Disclosure that Judge Norton had received all $12,000 in 1982 did not square with information fromCallaghan that a formal contract had been concluded in April, 1979 and from the clerk's office that Judge Norton had flown all around the country for conferences on his Norton Bankruptcy Law and Practice (Pet.E.Writ passim).

IX. CONCEALMENT BY OPPOSING COUNSEL CONSTITUTES ACTUAL FRAUD ON THIS COURT

Petitioner has not discovered a case in which the Supreme Court concluded that an actual fraud had been perpetrated on it. But petitioner has found two cases in which the Court held that an actual fraud had been perpetrated on a United States Court of Appeals.

In Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 64 L.Ed. 997, 64 S.Ct. 997 (1944), the United States Circuit Court of Appeals for the Third Circuit in a prior appeal in a patent infringement case mentioned a published article describing a patented process as an improvement over existing technology, in the course of reversing the trial court and upholding the patent. Years thereafter, the circuit court was informed by a petition for an

extraordinary writ in the nature of a bill of review that the patent holder through its counsel had written the article and paid a labor official to state he was the author. The circuit court ruled that the article was not a ratio decidendi of the opinion and denied the petition. The court also faulted the petitioner for laches.

The Supreme Court reversed in an opinion by Justice Black, finding the mere possibility of influence was sufficient to grant the writ. The court instructed the court of appeals to remand to the district court with direction to dismiss the infringement action and rule the patent invalid. The latter was to punish the patent holder for propagating the fraudulent article even if true.

The Supreme Court noted approvingly that the petitioner had attached a copy

of its proposed complaint, although its filing was not necessary. The court clearly approved the filing of affidavits in the court of appeals in support of the petition. Despite a strong dissent by Justice Roberts and concurred in by three others, the court approved a review in and by the appeals court where the facts are conclusive. This position was followed a few years later by the entire court, through Justice Frankfurter, in Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 90 L.Ed. 1447, 66 S.Ct. 1176 (1946), where attorneys (for persons previously settling a case, a portion of which had reached the Supreme Court) brought to the attention of the Third Circuit a bribery of a circuit judge.

The old Fifth Circuit has stated that it is unequipped to have any type of factual investigation conducted before

it. Kinnear-Weed Corp. v. Humble Oil & Refining Co., 403 F.2d 437 (5th Cir. 1968).

Quinault has not asserted that Judge Norton received a bribe, but it has stated that he issued from his chambers numerous orders and opinions that were written by a party's attorneys with whom the judge had private financial and business dealings. Clearly, the old Fifth Circuit relied on the legitimacy of these orders and opinions. But neither that court nor this was told by Judge Norton or by Kutak Rock & Huie of their private financial and business dealings. This Court has spoken on such nondisclosure in a less compelling case, to wit: Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145, 21 L.E.2d 301, 89 S.Ct. 337 (1968):

A dispute was being arbitrated before a board of three arbitrators. A third arbitrator had been selected by the two arbitrators selected by each party. Unbeknownest to the petitioner, the third arbitrator had furnished engineering consulting services to the respondent, a prime contractor, who was a party to the arbitration. The relationship between the third arbitrator and the prime contractor was sporadic, there had been no dealings between them for about a year immediately preceding the arbitration, the patronage was repeated and significant, and the prime contractor had paid the arbitrator about $12,000 over a period of four or five years. "[A]nd the relationship even went so far as to include the rendering of services on the very projects involved in this lawsuit." 21 L.E.2d 303.

"An arbitration was held, but the facts concerning the close business connections . . . were unknown to petitioner and were never revealed to it by this arbitrator, by the prime contractor, or by anyone alse until after an award had been made." 21 L.E.2d 303.

The Court continued:

> "We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge." *** For in Tumey the Court held that a decision should be set aside where there is 'the slightest pecuniary interest' on the part of the judge *** [I]n the case of courts this is a constitutional principle." 21 L.E.2d 304. [First emphasis added.]

The Court cited to the 33rd Canon of Judicial Ethics which provides:

> "33. Social Relations.
> ". . . [A judge] should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may

reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct."

And the Court stated:

"This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." 21 L.E.2d 305.

Justice Fortas dissented on the basis that "The Court applies to this process rules applicable to judges . . . ." 21 L.E.2d 308. Three justices joined him.

The majority opinion concluded:

"We can perceive no way in which the effectiveness of the arbitration process will be hampered by the simple requirement that arbitrators disclose to the parties any dealings that might create an impression of possible bias." 21 L.E.2d 305.

The Commonwealth case was cited and discussed in petitioner's cert. petition in Case No. 80-344 (Pet.E.Writ at p. 218) at pages 17, 21, 28. On the latter page (28), petitioner stated:

> "Although no pecuniary interest can be proven, petitioners' proof of other facts -- taken in connection with admissions in judico -- should suffice to establish mandatory disqualification." (Pet.E.Writ at p. 239.)

Certainly, Aetna's counsel, Kutak, Rock & Huie should have disclosed the private financial and business dealings with Judge Norton when they filed their Brief of Respondents a month later. Too, they should have responded to the charges in the Petition for an Extraordinary Writ when they filed a motion under Federal Rules of Appellate Procedure (27 [b]).

ARGUMENT

X. A JUDGE MAY NOT HAVE AN INTEREST IN THE OUTCOME OF A CASE

A. SAID INTEREST IS A DEPRIVATION OF FIFTH AMENDMENT DUE PROCESS.

Magna Carta (A.D. 1215) provides in Article 39, as follows:

> "To no one will we sell, to no one will we refuse or delay, right or justice."

This is embodied in the assurance of Due Process of Law in the Fifth Amendment to the United States Constitution:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

In 1927, this Court first considered a case in which a judge had an interest in the outcome. Examined in Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437, were Ohio statutes which authorized the mayor of the village of North College Hill to try persons

apprehended for violation of prohibition laws. Upon conviction the mayor was authorized to "receive or retain the amount of his costs in each case, in addition to his regular salary, as compensation for hearing such cases." 71 L.Ed. 753. Without conviction, the mayor received nothing. Tumey was convicted. The costs imposed were $12 paid directly to the mayor. In a seven month period the mayor made almost $700.

> "But the pecuniary interest of the mayor in the result of his judgment is not the only reason for holding that due process of law is denied to the defendant here." 71 L.Ed. 758.

The Court found as a second ground the mayor's "official motive to convict and to graduate the fine to help the financial needs of the village."

> "A situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the

trial of defendants charged with crimes before him." 71 L.Ed. 759.

In Ward v. Village of Monroeville, 409 U.S. 57, 34 L.E.2d 267, 93 S.Ct. 80 (1972), the Court examined Ohio law which authorized a mayor to sit as his own court, to try traffic offenses and to fine an accused $50 for each offense. The mayor had wide executive responsibilities for revenue production. He accounted annually to the village council respecting village finances. From 30 to 50 per cent of village income was derived from the fines, forfeitures, costs and fees imposed by him in his court. This Court observed:

> "The fact that the mayor [in Tumey v. Ohio] shared directly in the fees and costs did not define the limits of the principle." *** [T]he test is whether the mayor's situation is one 'which would offer a possible temptation to the average man as a judge [1] to forget the burden of proof required to convict the defendant, or which might lead him [2] not to hold the balance nice, clear and true between the State and

> the accused . . . .'" *** Plainly that 'possible temptation' may also exist when the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court." 34 L.E.2d 271. [Emphasis added.]

Justice White dissented because the mayor "had no direct financial stake in its outcome." finding the presumption of regularity to be sufficient and "leav[ing] the due process matter to be decided on a case-by-case basis. . . ." 34 L.E.2d 272.

The above are criminal cases or akin thereto. There has been relief in a civil case which was not cited in Ward v. Monroeville, to wit:

> "At issue in this case is the question whether elementary requirements of impartiality taken for granted in every judicial proceeding are suspended when the parties agree to resolve a dispute through arbitration." Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145, 21 L.E.2d 301, 305, 89 S.Ct. 337 (1968).

Each of the above cases disclosed money being paid or having been paid directly or indirectly to the tribunal. By contrast In re Murchison, 349 U.S. 133, 99 L.Ed. 942, 75 S.Ct. 623 (1955), the "one-man judge-grand jury" received nothing, but still had an interest in the litigation. Under Michigan law any judge of record could compel witnesses to appear before him in secret to testify about suspected crimes. Murchison was called to so testify. The judge concluded that he had committed perjury, charged him, ordered him to appear and show cause why he should not be punished for criminal contempt. The Judge then tried him in open court, convicted and sentenced him for contempt. The Court first observed:

> "A fair trial in a fair tribunal is a basic requirement of due process. *** To this end no man can be a judge in his own case and no man is permitted to try cases

> where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." [Emphasis added.] 99 L.Ed. 946.

The Court found an interest in the outcome from (a) the presumed existence of a carryover zeal from the grand jury to the tribunal and (b) personal knowledge of facts disclosed in the grand jury room.

> "There were no pubic witnesses upon whom petitioners could call to give disinterested testimony concerning what took place in the secret chambers of the judge." 99 L.Ed. 947.

The Court emphasized the absence of cross-examination of the judge as to his personal knowledge. Three justices dissented from disqualifying a judge "when his sole interest, as shown by this record, is the maintenance of order and decorum in the investigation of crime -- an intest which he shares in common with all judges who punish for contempt." 99 L.Ed. 949.

B. AN INTEREST IN THE OUTCOME OF THE CASE IN VIOLATION OF 28 U.S.C. §455(b)(4)

All of the preceding cases are from this Court and all ajudge the impartiality of the tribunal under Due Process of Law. Judge Norton's interest also violates 28 U.S.C. §455(b)(4):

> (b) [Any referee in bankruptcy, amended effective November 6, 1978, to refer to any bankruptcy judge"] shall also disqualify himself in the following circumstances:
>
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings; ***

28 U.S.C. §455(d) defines "financial interest" as --

> "[O]wnership of a legal or equitable interest, however small, or a relationship as director, adviser, or toher active participant in the affairs of a party [with certain exceptions, not here relevant]."

This Court presumed that 28 U.S.C. §455 is constitutional in United States v. Will, 449 U.S. 200, 66 L.E.2d 392, 101 S.Ct. 471 (1980), the only case to examine this statute. Of relevance to Judge Norton's interest is the quote therein from The Federalist No. 79, p. 491 (1818) (emphasis deleted):

> "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." 66 L.E.2d 408.

Several courts of appeals have passed upon 28 U.S.C. §455. In Potashnick v. Port City Construction Co., 609 F.2d 1101 (1980), the old Fifth Circuit reversed an order of a second judge that District Judge Hand was not disqualified by reason of the fact that prior to commencement of

pending litigation Judge Hand and Port City's trial counsel, Paul Brock, had jointly invested in real estate which, during the course of pending litigation, had itself become the subject of litigation for which Brock undertook to seek a procedural delay in the extrajudicial case on behalf of Judge Hand and others.

In Hall v. Small Business Administration, 695 F.2d 175 (1983), the new Fifth Circuit vacated a judgment of the district court presided over by a United States Magistrate because after the magistrate had mentally decided the sex discrimination case and while an opinion was being drafted by his law clerk, the latter accepted an offer of employment with the plaintiff's attorney which was not to commence until after the opinion was completed, notwithstanding the magistrate's statement that the law

clerk's opinion and work product playedno part in his decision.

In re Virginia Electric Co., 539 F.2d 357 (4th Cir. 1976), interpreted the statutory language, "any other interest that could be substantially affected by the outcome of the proceedings." Vepco had sued a supplier of materials. The materials apparently caused the station to use more expensive fuel for a nuclear power station. Vepco claimed as an element of damages monies which Vepco had surcharged its customers for the increased cost of fuel. If Vepco should prevail, the surcharge would be rescinded, and customers would receive a rebate. The trial judge was a customer of Vepco and thus could receive a rebate as a result of the litigation. The judge recused himself. Vepco sought review by petitions for interlocutory appeal and

supervisory writ of mandamus. The Fourth Circuit held that the judge abused his discretion in disqualifying himself.

In dictum, the appeals court ruled that the bare expectacny of an heir in an inheritance was "any other interest." The court suggested that the bare expectancy of a utility user in a rebate from a court case which concludes favorably for the user, and flows immediately from the conclusion of the case is "any other interest." The court ruled that an expectancy of an immediate rebate of $70 to $100 cash in hand is not de minimis, but the expectancy of $70 to $100 spread out over as many as 40 years and contingent on a specific outcome of the case and future regulatory action is de minimis.

C. APPLICATION OF LAW TO FACTS.

Quinault has no proof that Aetna made a direct payment of money to Judge Norton in return for a favorable decision in the Georgia Paneling Supply bankruptcy.

Quinault has proof that Aetna's attorneys Kutak, Rock & Huie rendered valuable services to Judge Norton for which he was paid substantial monies by third persons. Quinault has no proof that Kutak's Dobbs was paid for his work on the Chapter XII book. Without payment of royalties, Dobbs would expect some sort of a quid pro quo. Victory in court for a client as prestigious as Aetna in a contested matter with as serious charges as fraud and conversion in Georgia Paneling Supply would seem to be a reasonably appropriate payment for such extensive treatise writing.

The treatise-writing enterprise between Judge Norton and Kutak, Rock & Huie was so extensive that his interest in being a published author was practically and seriously inconsistent with being a judge in a vigorously contested pending matter involving Kutak, Rock & Huie's client Aetna.

An example of the foregoing is the following:

1. Quinault's FRCP 60(b) motion listed as a ground: "(3) fraud . . . misrepresentation, or other misconduct of any adverse party." See Second Amendment, filed June 10, 1977; transcript of July 19, 1977 in camera conference with Judge Freeman at pp. 3,4; district court orders filed July 22, 1977, August 26, 1977;

2. One misrepresentation complained of was Kutak's Dobbs' statements on May 18, 1976 at the settlement hearing before Judge Norton, to the effect that the simple facts of the case were that Aetna had made a loan to the bankrupt, when in fact "just one loan"

was made to Georgia Paneling Company, Inc.;

3. Kutak/Dobbs' misrepresentation was a subject matter in controversy;

4. Considering Judge Norton's business dealing with Dobbs, the judge had a financial interest in Dobb's conduct, for an affirmed finding of misrepresentation would probably dissuade Dobbs from assisting in the writing of books which would provde royalty income to Judge Norton, or would isrupt the relationship with Dobbs' partner Dixon who wa essential for assisting in the authorship of the treatise and keeping it current by supplementation.

Judge Norton was a customer of Kutak, Rock & Huie's treatise writing enterprise.

Judge Norton was zealously pursing the enhancement of his judicial reputation and the status of the United States Bankruptcy Courts. He was so zealous that he could not be fair in respect of Quinault's charges of judicial misconduct.

Having been charged with judicial misconduct, Judge Norton was a judge in his own case when he adjudged the charges to be baseless. In addition, he had personal knowledge of the extensive ex parte conferences and work sessions involving him and Kutak, Rock & Huie and could not be cross-examined.

While the following were under submission to Judge Norton:

(a) Aetna's motion for an award of costs, filed June 9, 1977, and determined June 13, 1977; and

(b) Quinault's FRCP 60(b) motion, filed May 31, 1977, and determined December 20, 1977;

Judge Norton, as presiding judge, and a defendant (Aetna) 's attorneys (Kutak) shared an ownership interest or privilege in a common-law copyright in Real Property Arrangements under Chapter XII, Federal Bankruptcy Act until copyrighted

by The Harrison Company on October 19, 1977, and a contractual interest in a United States Copyright thereafter.

During the course of Aetna's motion for an award of attroney's fees, filed September 1, 1977 and determined June 7, 19[illegible] (November 14, 1978), Judge Norton as presiding judge and Aetna's attorneys' Kutak, Rock & Huie shared through Kutak partner Harry D. Dixon, Jr. legal ownership interests in an unrelated common-law copyright to the "unfixed material" which became Volume 2 of Norton Bankruptcy Law and Practice (under 17 U.S.C. 301[b]) which was supplanted by a contractual interest in a United States Copyright held by Callaghan & Company to said treatise on and after September 2, 1981.

During the course of Aetna's motion for an award of attorney's fees, Kutak

Rock & Huie had in effect represented Judge Norton in negotiating a royalty agreement between the judge and Callaghan & Compnay in which Kutak's Dixon, Kincaid and Dobbs were third party creditor beneficiaries.

During the course of Aetna's motions for an award of costs and an award ofattorney's fees and Quinault's 60(b) motion, Judge Norton and Aetna's attorneys Kutak Rock & Huie had the following business dealings:

1. Kutak's Dobbs assisted in the writing of the Chapter XII book, the 1979 Supplement, the sales of which by The Harrison Company resulted in the receipt of royalty income by Judge Norton.

2. Kutak's Dixon and possibly Dobbs assisted Judge Norton

   (i) in contracting with Callaghan & Company for the publication of Norton Bankruptcy Law and Practice;

(ii) outlining Volume 2, an integral part of the treatise, which earned Judge Norton $12,000.00 of royalties from Callaghan & Company;

(iii) assuring Callaghan & Company of essential supplementation of the treatise so as to keep it current so sales would continue.

By entering a fee award in favor of Kutak, Rock & Huie's client Aetna, Judge Norton could be fairly certain that it would either be remitted to Kutak, Rock & Huie or that Aetna would be favorably disposed toward Kutak Rock & Huie.

Judge Norton had an interest in Kutak, Rock & Huie's financial well-beingto that its partners and lawyers could continue to render treatise writing services for him.

Judge Norton had a law clerk in the employ of a party to the proceeding. The law clerk was Kutak, Rock & Huie's Dobbs.

IX. A JUDGE MAY NOT HAVE A BIAS FOR A PARTY OR A PREJUDICE AGAINST A PARTY IN A CASE BEFORE HIM.

Justice Black made the following statement for the Court In re Murchison, 349 U.S. 133, 99 L.Ed. 942, 75 S.Ct. 623 (1955):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." [Emphasis added.] 99 L.Ed. 946.

As will be recalled, the actual bias in Murchison was the carryover zeal and personal knowledge of the one-man judge-grand jury. There was no financial interest in the outcome. This case suggests that a judge's personal bias may deprive a litigant of due process. However, Chief Justice Taft stated for the Court in Tumey v. Ohio, 273 U.S. 510, 71 L.E. 749, 47 S.Ct. 437 (1927), as follows:

> "All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest would seem generally to be matters merely of legislative discretion." [Emphasis added.] 71 L.Ed. 754.

In Chapman v. California, 386 U.S. 18, 17 L.E.2d 705, 87 S.Ct. 824 (1966), the Court held that "[T]here are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error. . . ." , citing in footnote No. 8 to Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 S.Ct. 437 (1927) "(impartial judge)". 17 L.E.2d 710. Tumey v. Ohio involved a financial interest of the mayor of an Ohio village in convictions in his court.

Only a few decisions of this Court have examined claims of personal bias of a judge unaccompanied by contumacious misconduct by counsel. The Court in Berger v. United States, 255 U.S. 22, 65

L.Ed. 481, 41 S.Ct. 230 (1922), held that an affidavit of bias under the predecessor to 28 U.S.C. §144 was sufficient for disparaging remarks about German-Americans prior to a criminal trial of one such (1922). The Court in United States v. Grinnell Corp., 384 U.S. 563, 16 L.E.2d 778, 86 S.Ct. 1698 (1966), held that an affidavit charging a judge with pre-trial predetermination of the merits of an antitrust case was insufficient because:

> "The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." 16 L.E.2d 793.

Thus, it is unclear whether the absence of actual bias is constitutionally mandated. It should be.

The Fifth Amendment not being a

certain basis for reversal for Judge Norton's bias and prejudice and Quinault having elected not to file an affidavit under 28 U.S.C. §144 (because of the feared retaliation of Judge Norton and Judge Freeman and unfavorable Fifth Circuit precedent), Quinault must perforce rely on 28 U.S.C. §455. There is wide disagreement among the Courts of Appeals on what type of personal bias is disqualifying. The Fifth Circuit requires an unrealistic showing. See, Davis v. Board of School Commissioners, 517 F.2d 1044 (5th Cir. 1975); Parrish v. Board of Commissioners of the Alabama State Bar., 524 F.2d 98 (5th Cir. 1975 en banc). Bound as it is to decisions of the old Fifth Circuit, Bonner v. City of Pritchard, Ala., 661 F.2d 1206 (11th Cir. 1981), the Eleventh Circuit has the same position. Other circuits are much more critical of biased judicial conduct. See, e.g., Nicodemus v. Chrsyler Corp.,

596 F.2d 152 (6th Cir.1979); Reserve Mining Co. v. Lord, 529 F.2d 181 (8th Cir. 1976).

The record is replete with examples of actual bias. It has been stated that Judge Norton engaged in misrepresentations from the bench. Once uttered, the presumption of regularity of judicial proceedings was rebutted as a matter of law. The bankruptcy judge would know of the lie. He would know that the trustee whom he had breakfasted with would know of it. He would know that Aetna's lawyer who had written the 40-page opinion would know of it. His independence would be affected because they could inform the district court. If the latter would not have removed him from office, a reprimand and probable lack of reappointment would be indicated. Insidiously the lie would warp his judgment and his scruples. He would not be able to resist respondents'

insistence on the inclusion of language in a fee opinion drafted for him that absolutely exculpated them from petitioner's charges of unprofessional conduct. He would not be able to resist his own survival instincts to exculpate himself from petitioner's charges of misconduct. He would not be able to withhold a malevolent desire to hurt petitioner; indeed, so to bury petitioner in distorted facts of virtually nonreviewable, credibility findings that no court would listen to petitioners, presuming he had been unjustly provoked.

These emotions are ones this Court can presume from knowledge of human nature -- take judicial notice, if one prefers -- and they form a disabling bias or prejudice as a matter of law. While occurring in a court setting, these facts form an extrajudicial basis for a disabling personal bias calling for mandatory Judicial disqualification.

VI.
CONCLUSION
and
ARGUMENT ON THE ONE QUESTION OF EXCEPTIONAL IMPORTANCE

Judging appearances, not one of the Justices of this Court has contributed as much to legal literature as Judge Norton. Each has dedicated thousands of hours to the careful analysis of petitions, appeals, briefs, statutes, constitutional provisions. This leaves no time for treatise writing. Good judging presupposes good fact-finding. With an insight into the material facts, a judge can achieve an understanding of legal principles; thereafter a wise application of law to facts is assured.

Many judges believe that the most critical stage of litigation is determination of fact. A conscientious effort must be made by the trial judge, within his proper role, to elicit truth. If accomplished, then regardless of

judicial differences on the correct legal principles to apply, litigants and counsel know the process has functioned well and are assured. But if fact finding is flawed, observers within and without the process are disturbed and the finest appellate judge cannot effect a result consistent with the actual facts. For the appellate system accords a presumption of correctness to fact finding. No judicial system is any stronger than the process for assuring that the emergence of the true facts in accordance with the rules of procedure and evidence.

In Judge Norton's courtroom in this and many other cases, the truth could not emerge. The truth was never important. What was important was personalties. And personalties were important because the trial judge's interests were focused on developing a reputation as a bankruptcy law innovator, a bankruptcy law scholar,

a leader of the bankruptcy bench and bar. There is no harm in simple ambition. But it can be blind. The flaw here is that Judge Norton is not endowed with the gifts of an Oliver Wendell Holmes, Jr.; and he could satisfy personal hunger for legal reknown only with the assistance of numerous lawyers, law students and law firms. An interest in judicial administration provided the support initially. Perhaps easy virtue thereafter.

Judge Norton's courtroom and the judicial effort required therein became in time a chore to be endured, a means to effect a change in the law thought desirable (with scant regard for the facts at hand), or a threat to blind ambition.

Fate brought petitioner to this courtroom, but it refused institutional justice. The first chapter of an

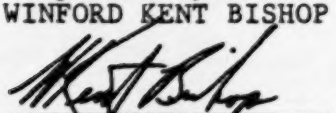
encounter with a Judicial Juggernault, although unsuccessful, was not, it is suggested, without influence. For the Nation itself has for over a year been deadlocked over the status of bankruptcy judges. The occasion, of course, is the holding in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 73 L.E.2d 598, 102 S.Ct. 2858 (1982), that a provision of the Bankruptcy Reform Act of 1978 which in effect grants Art I or adjunct judges the judicial power of the United States under Art III is unconstitutional. Petitioner believes that Quinault Pacific Corp. v. Aetna Business Credit, Inc. has been noted by influential members of this Court. If not, similar unreported incidents in and around bankruptcy court have contributed to national paralysis. Today, bankruptcy is big business in the United States, but most incumbent bankruptcy judges were appointed at a time when their ranks were not filled from the leading lights of the

legal profession. Petitioner respectfully suggests that if the first chapter of this case had been considered fully, Congress and the President would not be stymied over resolution of the predicament caused by Marathon, nor would the public be mystified why the Chief Justice, many circuit judges, district judges and members of the private bar say, No, to the simplest solution: elevate all of the bankruptcy judges to Art III status, and stop the battle of semantics/turf.

It is because of the present bankruptcy law conundrum and political realities that this case should be resolved by this Court. The greater issue is not this bankruptcy judge. It is whether this Nation is to have the common law tradition of individual justice, or an alien system of institutionalized justice of broad strokes for fine factual analysis.

"The sentence of today will make the right and wrong of tomorrow.", as Justice Cardozo observed; */ but the ultimate resolution of this case will shape the future course of our judicial system and the quality of justice it administers.

Respectfully submitted,
WINFORD KENT BISHOP



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20/ Benjamin N. Cardozo, The Nature of the Judicial Process (1921) at 21.

CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of the within and foregoing "Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit re Concealment of Business Relationships Between Bankuptcy Judge and Opposing Counsel" upon counsel for each respondent by depositing same in the United States Mail, sufficient postage prepaid, properly addressed to same at their last known business addresses, as follows:

BARCLAYS AMERICAN/BUSINESS CREDIT, INC.
c/o Kutak, Rock & Huie
41 Marietta Street, N.W.
Atlanta, Georgia 30303

JOHN C. PENNINGTON
c/o Pennington, Goetz & Cronkright
Peachtree Palisades Building,
4th Floor
1819 Peachtree Road, N.E.
Atlanta, Georgia 30309

FREEMAN & HAWKINS
c/o Paul W. Hawkins, General Partner
First Atlanta Tower, 28th Floor
Two Peachtree Street, N.W.
Atlanta, Georgia 30383

THE CITIZENS AND SOUTHERN NATIONAL BANK
c/o William C. Humpreys, Jr., Esq.
35 Broad Street, N.W.
Atlanta, Georgia 30303

INTERNATIONAL PAPER COMPANY
c/o Jeffrey M. Smith, Esq.
First Atlanta Tower, 22nd Floor
Two Peachtree Street, N.W.
Atlanta, Georgia 30383

THE FLINTKOTE COMPANY
c/o T. H. Parke, Esq.
The Flintkote Company
580 Decker Drive
Irving, Texas 75062

ICG VISTA PETROLEUMS, INC.
c/o John E. Carstairs, Corporate Secretary
1700-444 St. Mary Avenue
Winnipeg, Manitoba, Canada R3C 3T7

This 26th day of October, 1983.

W. Kent Bishop
Counsel for Quinault
Pacific Corporation, Petitioner.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 83-8357

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et. al.,

Respondents,

and

THE FLINTKOTE COMPANY, et al.,

Involuntary Petitioners,

* * * * * * * * *

In Re: GEORGIA PANELING SUPPLY, INC.,

Discharged Bankrupt,

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et al.,

Respondents.

Application for Extraordinary Writ

[Filed June 2, 1983]

Before GODBOLD, Chief Judge, FAY and JOHNSON, Circuit Judges.

B Y T H E C O U R T :

IT IS ORDERED that the motion of petitioner for an extraordinary writ is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 83-8357

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et. al.,

Respondents,

and

THE FLINTKOTE COMPANY, et al.,

Involuntary Petitioners,

* * * * * * * * *

In Re: GEORGIA PANELING SUPPLY, INC.,

Discharged Bankrupt,

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et al.,

Respondents.

Application for Extraordinary Writ

[Filed June 13, 1983]

Before GODBOLD, Chief Judge, FAY and JOHNSON, Circuit Judges.

B Y T H E C O U R T :

The motion of Barclays American/Business Credit, Inc. for award of expenses and attorney's fees is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 83-8357

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et. al.,

Respondents,

and

THE FLINTKOTE COMPANY, et al.,

Involuntary Petitioners,

* * * * * * * * *

In Re: GEORGIA PANELING SUPPLY, INC.,

Discharged Bankrupt,

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., et al.,

Respondents.

Application for Extraordinary Writ

[Filed June 16, 1983]

Before GODBOLD, Chief Judge, FAY and JOHNSON, Circuit Judges.

B Y T H E C O U R T :

The motion of Quinault to supplement its petition for an extraordinary writ and for an extension of time to file a petition for rehearing en banc is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8357

QUINAULT PACIFIC CORPORATION,

Petitioner,

versus

BARCLAYS AMERICAN/BUSINESS CREDIT, INC., JOHN C. PENNINGTON, FREEMAN & HAWKINS, CITIZENS & SOUTHERN NATIONAL BANK, INTERNATIONAL PAPER COMPANY,

Respondents.

FLINTKOTE COMPANY, ICG VISTA PETROLEUMS, INC.,

Involuntary Petitioners/ deemed respondents.

- - - - - - - - - - - - -

Application for Extraordinary Writ

- - - - - - - - - - - - -

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC
(Opinion __, 11 Cir., 198_, __F.2d__)

(July 28, 1983)

Before GODBOLD, Chief Judge, and JUDGES FAY and JOHNSON, Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ John C. Godbold
United States Circuit Judge

REHG-6
(Rev. 6/82)